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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 10/03/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/986,021

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

Kathleen J. Prunner

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-108 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 23-33, 35, 36, 39-42, 48, 50-57, 60, 63-69, 71-73, 79, 80, 84-89, 91 and 100-106 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 14 July 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims withdrawn from consideration are 10,12-22,34,37,38,43-47,49,58,59,61,62,70,74-78,81-83,90,92-99,107 and 108.

Art Unit: 3751

DETAILED ACTION

Drawings

1. The proposed drawing correction, filed on July 14, 2003 (Paper No. 15), showing a correction to Fig. 1 and adding a new figure, Fig. 1A, has been approved. The filing of new formal drawings for these figures is required in reply to this Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Since the new figure (Fig. 1A) has been approved, the specification should be appropriately amended between ¶s 037 and 038 to add a brief description of this new figure. Amendment of the specification is required in reply to the Office action to avoid abandonment of the application. The amendment to the specification will not be held in abeyance.

Specification

2. The following informalities in the claims are noted: (A) in claim 1, on line 11, --the-- should be inserted after "with"; (B) in claims 23 and 50, on line 10, --the-- should be inserted after "with"; and (C) in claim 52, on line 9, --the-- should be inserted after "with". Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 29-32 and 103-105 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled

Art Unit: 3751

in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 29 and 103 call for “a portion located on the receptacle” as well as this “portion” being “configured to removably receive at least part of the removable unit”. However, the specification fails to adequately describe what specific structure constitutes such a portion on the receptacle as well as the configuration of the portion that removably receives at least part of the removable unit.

5. Claims 32 and 69 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the receptacle to have a neck in which an insert is fixed to define a housing for receiving the removable unit (note lines 20-21 on page 12) and an end wall of the insert to have an end-piece for fixing a dip tube (note from line 24 on page 12 to line 1 on page 13), does not reasonably provide enablement for a “portion comprises a sleeve having an open end through which said at least a part of the removable unit passes and another end placed in flow communication with the variable inside volume via the dip tube, as called for by claims 32 and 69. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

6. Claims 50-60, 63-69, 71-73, 79 and 80 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a bottom portion and a top portion that are assembled together (note lines 3-4 on page 13) and the removable unit housing an applicator element (note lines 4-5 on page 13), does not reasonably provide enablement for “a first portion and a second portion configured to cooperate together to define a substantially leak-proof enclosure for the applicator element”, as called for by claims 50 and 52. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3751

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-9, 33, 35, 36, 39-42, 48, 50-57, 60, 63, 64-69, 71-73, 79, 80 and 84-89, 91, 100-106 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claims 1 and 50 are indefinite since it is unclear as to how the "product" contained in the receptacle, as called for by line 2, structurally relates to the recitation of "a cosmetic or care product contained in the receptacle", as called for by line 3. For clarification, it is suggested that line 3 be changed to read --the product contained in the receptacle is a cosmetic or care product;--.

10. Claim 84 is indefinite since it is unclear as to how the "cosmetic or care product" configured to be contained in the receptacle, as called for by lines 2-3, structurally relates to the recitation of "a cosmetic or care product contained in the receptacle", as called for by line 4; it appears that line 4 is redundant with lines 2-3.

11. The following is a quotation of the fourth paragraph of 35 U.S.C. 112:

A claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

12. Claims 40, 41 and 71, 72 are rejected under 35 U.S.C. 112, fourth paragraph, as not further limiting claims 1 and 50, respectively, and being redundant of claims 1 and 50, respectively, i.e., the limitations are already recited in claims 1 and 50.

Claim Rejections - 35 USC § 102

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 3751

14. Claims 23-27, 29, 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Amen. Amen discloses a product application device having all the claimed features including a receptacle (constituted by container C) having a variable inside volume configured to contain a product; an applicator element 29; a housing 1 for receiving the applicator element 29 (note Figs. 3 and 4); a closure element (constituted by top plate 33) configured to close the housing 1 in a substantially leak-proof manner when the applicator element 29 is received in the housing 1; and a dip tube (constituted by cylinder 7 and piston 14) configured to extend substantially to the bottom of the receptacle C (note Fig. 3) to enable the housing 1 to be in flow communication with the product flowing from the receptacle C wherein the closure element 33 defines a removable unit (note Fig. 6) configured to be associated with the receptacle C to fill the removable unit with the product and wherein the applicator element 29 is received within the removable unit. With regard to claim 24, Amen additionally discloses that the housing 1 defines a body and the closure element 33 defines a handle 34 with the body and handle cooperating to define an inside space in which the applicator element 29 is contained (note Figs. 3, 4 and 6). With regard to claim 25, Amen also discloses that the inside space is substantially leak proof. With respect to claim 26, Amen additionally discloses that the handle 34 and the body are connected by screw fastening (note lines 69-71 in col. 3). With respect to claim 27, Amen further discloses that the body has a sealing skirt constituted by the outermost edge of the plate 33 (note Fig. 4). With regard to claim 29, Amen also discloses a portion 21 located on the receptacle C and configured to removably receive the removable unit. With respect to claim 31, Amen additionally discloses that the portion 21 is in flow communication with the volume via the dip tube. With regard to claim 32, Amen also discloses that the portion 21 forms a sleeve having an open top end through which the removable unit passes and another end in flow communication with the volume via the dip tube. With regard to claim 24, Amen additionally discloses that the housing 1 defines a body and the closure element 33 defines a handle 34 with the

Art Unit: 3751

body and handle cooperating to define an inside space in which the applicator element 29 is contained (note Figs. 3, 4 and 6). With regard to claim 25, Amen also discloses that the inside space is substantially leak proof. With respect to claim 26, Amen additionally discloses that the handle 34 and the body are connected by screw fastening (note lines 69-71 in col. 3). With respect to claim 27, Amen further discloses that the body has a sealing skirt constituted by the outermost edge of the plate 33 (note Fig. 4). With regard to claim 29, Amen also discloses a portion 21 located on the receptacle C and configured to removably receive the removable unit. With respect to claim 31, Amen additionally discloses that the portion 21 is in flow communication with the volume via the dip tube. With regard to claim 32, Amen also discloses that the portion 21 forms a sleeve having an open top end through which the removable unit passes and another end in flow communication with the volume via the dip tube.

15. Claims 50, 51, 53-57, 60, 63, 79 and 80 are also rejected under 35 U.S.C. 102(b) as being anticipated by Amen. Amen discloses a product application device having all the claimed features including a receptacle (constituted by container C) having a variable inside volume configured to contain a product; an applicator element 29; a first portion (constituted by the outer side wall of receptacle 21) and a second portion (constituted by top plate 33) configured together to define a substantially leak-proof enclosure (note Fig. 3); and a dip tube (constituted by cylinder 7 and piston 14) configured to enable the enclosure to be in flow communication with the product flowing from the receptacle and wherein the first and second portions cooperate to define a removable unit (note Fig. 6). With respect to claim 51, Amen also discloses that the first portion forms a housing for receiving part of the applicator element 29 and the second portion 33 forms a closure element configured to close the housing (note Fig. 3). With respect to claim 53, the device of Amen is inherently configured to allow a reduction in the variable inside volume of the receptacle from a first volume to a second volume as the fluid level in the receptacle drops with continuing uses of the

Art Unit: 3751

applicator element 29 wherein the reduction from the first volume to the second volume generates pressure inside the receptacle for causing the product to flow into the housing via the dip tube as pressure is applied to the fluid level by the pumping action of the pump (note lines 36-40 in col. 3). With regard to claim 54, Amen also discloses that an end of the dip tube portion 7 extends substantially to the bottom of the receptacle C (note Fig. 3). With respect to claim 55, Amen further discloses that the dip tube portion 14 communicates with the bottom end of the housing 1 (note Fig. 3). With respect to claim 56, Amen also discloses that the housing 1 has an end wall constituted by the bottom of housing 1 (note Fig. 3). With regard to claim 57, Amen further discloses that the bottom end wall of the receptacle C is planar in configuration (note Fig. 3). With regard to claim 60, Amen additionally discloses that the handle 34 and the body are connected by screw fastening (note lines 69-71 in col. 3). With respect to claim 63, Amen further discloses that the body has a sealing skirt constituted by the outermost edge of the plate 33 (note Fig. 4). With regard to claim 79, Amen additionally discloses that the applicator element 29 is fixed to the second portion 33 (note Fig. 6). With respect to claim 80, Amen also discloses that the applicator element 29 is fixed to the second portion 33 which defines a handle 34.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 1-6, 8, 9, 33, 35, 36, 40-42, 48, 50, 51, 53-60, 63, 71-73, 84-89, 91, 100, 101, 103, 105 and 106 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amen in view of

Art Unit: 3751

Schwartzman. Amen discloses a product application device having the claimed features including a receptacle (constituted by container C) having a variable inside volume configured to contain a product; an applicator element 29; a housing 1 for receiving the applicator element 29 (note Figs. 3 and 4); a closure element (constituted by top plate 33) configured to close the housing 1 in a substantially leak-proof manner when the applicator element 29 is received in the housing 1; and a dip tube (constituted by cylinder 7 and piston 14) configured to extend substantially to the bottom of the receptacle C (note Fig. 3) to enable the housing 1 to be in flow communication with the product flowing from the receptacle C and wherein the applicator element 29 is removable from the housing 1 (note Fig. 6). Amen also discloses that the product application device is broadly directed to lubricant applicators (note line 15) to apply a lubricant product. Although Amen discloses that the application device is used for applying a lubricant product, attention is directed to Schwartzman who discloses another product application device which is used for applying fluid cosmetic products or for applying oil or polish products (both of which constitute lubricants) or the like on any suitable surface (note lines 29-33 in col. 1) and which utilizes a dip tube which extends substantially to the bottom of the receptacle. It would have been obvious to one of ordinary skill in the product application art, at the time the invention was made, to substitute for the lubricant product of Amen, the fluid cosmetic product as, for example, taught by Schwartzman wherein so doing would amount to mere substitution of one product for another that would work equally well in the Amen device. With respect to claims 2 and 85, the device of Amen is inherently configured to allow a reduction in the variable inside volume of the receptacle from a first volume to a second volume as the fluid level in the receptacle drops with continuing uses of the applicator element 29 wherein the reduction from the first volume to the second volume generates pressure inside the receptacle for causing the product to flow into the housing via the dip tube as pressure is applied to the fluid level by the pumping action of the pump (note lines 36-40 in col. 3). With regard to claims 3 and 86, Amen also

Art Unit: 3751

discloses that an end of the dip tube portion 7 extends substantially to the bottom of the receptacle C (note Fig. 3). With regard to claims 4 and 87, Amen further discloses that the dip tube portion 14 communicates with the bottom end of the housing 1 (note Fig. 3). With respect to claims 5 and 88, Amen additionally discloses that the housing 1 has an end wall constituted by the bottom of housing 1 (note Fig. 3). With regard to claim 6, Amen further discloses that the bottom end wall of the receptacle C is planar in configuration (note Fig. 3). With respect to claims 9 and 89, Amen also discloses that the dip tube is fixed to an end piece 14 integrally formed with the end wall (note lines 22-24 in col. 3). With respect to claim 8, Amen additionally discloses that the dip tube portion 14 is a separate element fixed to the housing (note Fig. 3). With regard to claim 33, Schwartzman further teaches the obviousness of forming the applicator of Amen of foam 30 and fabric 32 (note lines 51-54 in col. 2) which are inherently compressible especially when a cosmetic product is used. With regard to claim 35, Schwartzman additionally teaches the obviousness of using foam formed of a plastic material (note Figs. 1, 2, 5 and lines 51-54 in col. 2). With regard to claim 36, Schwartzman also teaches the obviousness of using a plastic material which is polyurethane (note lines 51-52 in col. 2). With regard to claims 41 and 72, Schwartzman further teaches the obviousness of using a cosmetic product which is applied to the skin of the user (note lines 29-30 and 35-39 in col. 1) which inherently constitutes a perfume product since such cosmetics are well known to contain perfume. With respect to claims 42, 73 and 106, Schwartzman additionally teaches the obviousness of forming the receptacle of a flexible walled receptacle (note Fig. 2 and lines 41-42 in col. 2) especially when the product encompasses a cosmetic product. With respect to claim 48, Amen additionally discloses that the housing has an open end wherein the closure element 33 is configured to close the open end (note Figs. 3 and 4). With regard to claim 84, Amen further discloses that the housing 1 has an opening through which the applicator element 29 passes (note Fig. 6) and that the device is configured to enable the housing 1 to be in flow communication

Art Unit: 3751

with the product contained in the receptacle C when the opening of the housing is closed by the closure element 33 (note Fig. 4). With regard to claim 91, Amen also discloses that the applicator element 29 is removable from the housing 1 (note Fig. 6). With respect to claim 100, Amen further discloses that the closure element 33 defines a removable unit configured to be associated with the receptacle C to fill the unit with the product and that the applicator 29 is received within the removable unit. With regard to claim 101, Amen additionally discloses that the housing 1 defines a body and the closure element 33 defines a handle 34 with the body and handle cooperating to define an inside space in which the applicator element 29 is contained (note Figs. 3, 4 and 6). With respect to claim 103, Amen also discloses a portion 21 located on the receptacle C and configured to removably receive the removable unit. With respect to claim 105, Amen additionally discloses that the portion 21 is in flow communication with the volume via the dip tube.

18. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Amen in view of Schwartzman as applied to claims 1-6, 8, 9, 33, 35, 36, 40-42, 48, 50, 51, 53-60, 63, 71-73, 84-89, 91, 100, 101, 103, 105 and 106 above, and further in view of Vasas. Although Amen discloses using a planar end wall, attention is directed to Vasas who discloses another product application device having a housing with an end wall that is substantially concave towards a portion of the housing in which the applicator element is received (note Figs. 1, 3, 5 and 6) in order to accommodate an applicator element that has a convex configuration rather than a planar end configuration (note Figs. 9 and 10). It would have been obvious to one of ordinary skill in the product application art, at the time the invention was made, to form the end wall of Amen so that it is substantially concave towards a portion of the housing in which the applicator element is received in view of the teachings of Vasas in order to accommodate an applicator element that has a convex configuration rather than a planar end configuration.

Art Unit: 3751

19. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Amen in view of Schwartzman as applied to claims 1-6, 8, 9, 33, 35, 36, 40-42, 48, 50, 51, 53-60, 63, 71-73, 84-89, 91, 100, 101, 103, 105 and 106 above, and further in view of Deakers. Although Amen fails to disclose that the applicator element can be formed of felt, attention is directed to Deakers who discloses another product application device having an applicator 20 formed of napped fabric (note lines 6-8 in col. 3), which inherently includes felt material, especially when the product to be applied is a cosmetic product such as deodorant product. It would have been obvious to one of ordinary skill in the product application art, at the time the invention was made, to form the applicator element of Amen of felt in view of the teachings of Deakers in order to apply the product to a sensitive surface such as the armpits of a user when the product is a cosmetic deodorant product.

Allowable Subject Matter

20. Claims 28, 30, 64, 102 and 104 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, first and second paragraphs, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Election/Restriction

21. Claims 10, 12-22, 34, 37, 38, 43-47, 49, 58, 59, 61, 62, 70, 74-78, 81-83, 90, 92-99, 107 and 108 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 10.

Art Unit: 3751

Response to Arguments

22. Applicant's arguments filed July 14, 2003 (Paper No. 14) have been fully considered but they are not deemed persuasive.
23. Contrary to applicant's statement that claims 11, 23 and 52 were not subject to any art rejections, it is pointed out that all these claims were indeed rejected on art as noted on pages 16, 17 and 19 of the first Office Action (Paper No. 11).
24. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

Conclusion

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

26. Any inquiry concerning this communication from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044. The examiner can usually be reached Monday through Friday from 5:30 AM to 2:00 PM.

Art Unit: 3751

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson, can be reached on 703-308-2580.

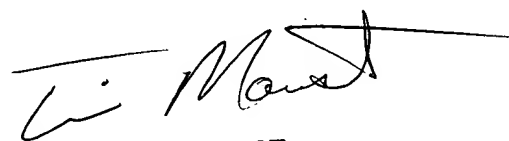
The Official FAX phone number for the organization where this application is assigned is: 703-872-9306. This FAX is located in Crystal Mall, Building 1, which is some distance away from the examiner's location in Crystal Park, Building 1. Hence, the examiner has no immediate access to faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0861.



Kathleen J. Prunner:kjp

September 29, 2003


TIMOTHY L. MAUST
PRIMARY EXAMINER